

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

RITA JETTE

Plaintiff,

No. C 05-2226 PJH

v.

**ORDER GRANTING AND
DENYING THIRD PARTY
MOTIONS TO DISMISS**

GEORGE MCQUEEN, et al.,

Defendants.

Third party defendants' separate motions to dismiss the third party plaintiff's complaint came on for hearing before this court on September 27, 2006. Third party plaintiff Michael Friel ("Friel") appeared through his counsel, Robert R. Riggs. Third party defendants Henry H. Katz ("Katz") and Seth L. Goldstein ("Goldstein") appeared through their counsel, Maureen M. Bryan. Having read the parties' papers and carefully considered the arguments and the relevant legal authority, and good cause appearing, the court hereby GRANTS third party defendant Katz' motion to dismiss, and DENIES third party defendant Goldstein's motion to dismiss, for the reasons stated at the hearing, and summarized as follows.

1. With respect to third party defendant Katz, the court finds that no personal jurisdiction over him exists. Third party plaintiff Friel concedes that no general jurisdiction exists, and is unable, in the alternative, to establish that the Ninth Circuit's three-prong test for specific jurisdiction is satisfied. See, e.g., Glencore Grain Rotterdam B.V. v. Shivnath Rai Harnarain Co., 284 F.3d 1114, 1123 (9th Cir. 2002). Friel's reliance on limited correspondence from Katz is insufficient to establish proof of purposeful avilment, in view of Katz' declaration affirmatively establishing both a lack of physical contact with the state

1 of California, and the absence of any legal representation of the plaintiff Jette in the
2 underlying California probate action. Moreover, the court also finds that the exercise of
3 personal jurisdiction over Katz would be unreasonable under the circumstances, in view of
4 his lack of contacts with the state of California, and the underlying plaintiff's own status as a
5 non-California resident.

6 2. With respect to Friel's third party complaint against Goldstein, the court finds
7 that subject matter jurisdiction over the complaint exists pursuant to the supplemental
8 jurisdiction provision of 28 U.S.C. § 1367(a), and furthermore, that Friel has standing to
9 assert a claim for contribution and indemnity against Goldstein. As to the former, no
10 exception to supplemental jurisdiction under section 1367(b) is applicable, since Friel is an
11 underlying *defendant* and subsection (b) is interpreted to apply to underlying plaintiffs only.
12 As such, no independent basis of jurisdiction is necessary, and the fact that Goldstein and
13 Friel are both residents of California does not bar the third party complaint. As to the latter,
14 Friel has sufficiently demonstrated the existence of a possible theory of liability against
15 Goldstein, under California's doctrine of equitable indemnity. This is sufficient to establish
16 standing. See, e.g., Ellison v. Shell Oil Co., 882 F.2d 349, 354 (9th Cir. 1989); see also
17 American Motorcycle Assoc. v. Superior Court, 20 Cal. 3d 578, 583 (1978). Accordingly,
18 Goldstein's argument that standing is lacking fails.

19 For the above reasons, the court hereby GRANTS third party defendant Katz' motion
20 to dismiss third party plaintiff Friel's complaint against him, and DENIES third party
21 defendant Goldstein's motion to dismiss third party plaintiff Friel's complaint against him.

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23 **IT IS SO ORDERED.**

24 Dated: October 3, 2006



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26 PHYLLIS J. HAMILTON
27 United States District Judge
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